IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8097 OF 2004

Anil Nagesh Datar — Petitioner

versus

Nashik District Maratha Vidya Prasarak Samaj and others — Respondents

R.S.Apte, adv. for petitioner.

V.P.Malvankar, AGP for State.

CORAM : A.P.SHAH AND S.C.DHARMADHIKARI, J.

DATE : 2nd December 2004

PC :

1. Aggrieved and dissatisfied by an order passed by the Deputy Director of Education, Nashik Region, Nashik rejecting the approval to the appointment of petitioner, present petition under Article 226 of Constitution of India has been instituted.

2. It is contended by Mr.Apte, learned counsel appearing for petitioner that for the period from 1st October 1987 to 27th February 1988 the petitioner was appointed as full time teacher in

Kakasaheb College of Arts & Commerce under respondent no.1 management. Thereafter he was appointed as part time teacher in Jijamata Girls College, Satana, District Nashik and approval was granted to this appointment. This appointment was from 13th February 1989 till end of academic year 1990-91. Thereafter, approval was granted for a further period but it appears that from 17th September 1993 till end of academic year 1999-2000 petitioner was appointed as part time teacher on clock hour basis in Arts, Science and Commerce College, at Vani. This appointment was also approved. From 23rd January 2002 to end of academic year 2003-2004 petitioner was appointed as full time teacher at Arts, Science & Commerce College, Niphad but approval was refused to this appointment on the ground of backlog. Petitioner was appointed on clock hour basis instead of continuing him as a full time teacher by the management.

3. Thus, the grievance of the petitioner is that despite working for more than 10 years and the appointments having been approved, the proposal forwarded by respondent no.1 management for the year 2003-2004 ought to have been accepted and approval granted by respondents 2 and 3. It is

contended that the reason assigned for not approving petitioner's appointment is backlog of reserved category. This reason is unsustainable because Rule 9(7) of Maharashtra Employees of Private Schools Rules (hereinafter referred to as "MEPS Rules" for the sake of brevity) contemplates reservation to the extent of 34% of total number of teaching and non teaching posts. Even interchangebility is permissible. However, reservation in the present case has exceeded 50%. Therefore, backlog could not have been assigned as a reason and the order deserves to be quashed and set aside. When this matter appeared before us on 14th October 2004 respondents 2 and 3 applied for time to file affidavit.

4. Mr.A.J.Sonawane, Deputy Education Officer in the office of Education Officer (Secondary), Zilla Parishad, Nashik has filed an affidavit. It is contended in this affidavit that approval was granted only for leave vacancy period initially and thereafter periodically approval has been granted. Petitioner has only served on leave vacancy, part time and on clock hour basis. It is contended that the service during the said period was not continuous. Although these aspects are highlighted in the affidavit, the

order refusing approval does not make any reference to them. The order mentions only backlog. The details of backlog are sought to be explained on affidavit. It is alleged that there is huge backlog due to which approval to the appointment of petitioner has been rejected.

5. In case of same management (respondent no.1) in similar petitions, we have referred the matter back to the Education Officer for examining the aspect of backlog. That was because the management took a stand that the computation of backlog insofar as respondent no.1 is concerned, is not in accordance with law. The backlog proceeds on the basis of reservation of more than 50% which is impermissible. On these pleas raised by the management, we directed re-examination of issue of backlog by giving opportunity to all concerned.

6. Since the matter pertains to the same management and grievances are common, we direct the Education Officer (Secondary), Zilla Parishad, Nashik to re-examine the issue of approval to the appointment of petitioner by respondent no.1 as also backlog of posts for reserved categories afresh after giving

opportunity to the petitioner and the management. The concerned officer to pass a speaking order. Needless to observe that he shall not be influenced by refusal of approval to the appointment of petitioner on earlier occasion. All contentions on merits are expressly kept open.

7. The Education Officer is directed to pass appropriate orders in accordance with law as expeditiously as possible and in any event within a period of four months from today. It is further directed that services of petitioner shall not be discontinued till the issue is re-examined in the light of our aforesaid directions and for a period of two weeks thereafter to enable the petitioner to adopt appropriate proceedings, if the order is adverse to him.

8. Petition stands disposed of with these directions. No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)